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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947

No. 90

PEOPLE OF THE STATE OF ILLINOIS, EX REL., VASHTI McCOLLUM,
Appellant,

against

BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 71, CHAMPAIGN COUNTY, ILLINOIS, ET AL.,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS

BRIEF OF AMERICAN CIVIL LIBERTIES UNION AS *AMICUS CURIAE*

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ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF OF AMERICAN CIVIL LIBERTIES UNION AS *AMICUS CURIAE*

Interest of American Civil Liberties Union

This brief is filed with leave of the Court. The American Civil Liberties Union, a non-profit, non-partisan organization, is devoted to protection and preservation of the fundamental freedom guaranteed all citizens of this country by Federal and State constitutions. It has a nationwide membership of persons of all religious views and sects, including citizens of Illinois.

It believes no human freedoms are more vital than those assured in the Federal First Amendment and reassured in the Bills of Rights of the State Constitutions. It believes in the basic, democratic American concept of separation of church and state in its broadest aspects and that neither Federal nor State Governmental agencies should be permitted, by laws or by acts, to breach; ever so slightly, the wall of separation.

By this brief we do not, expressly or impliedly, criticize religion or religious sects or private denominational schools. The problem here relates solely to religious freedom and the proper place for religious education.

We shall limit ourselves to a discussion of constitutional questions involved in conducting classes of public school children in sectarian religion in classrooms in public school buildings during regular school hours with the permission and cooperation of local school authorities. Certain other questions, not directly involved, are merely mentioned (see Point V).

Statement of the Case

Appellant, as a taxpayer and resident in Champaign School District No. 71, Illinois, where her son, James, attends school, sought by mandamus to require Appellee to prohibit teaching of religious education in the public schools in that District and in all public school buildings therein when occupied by the schools (1, 17*). She appeals from a judgment of Illinois Supreme Court affirming the denial of her petition by Circuit Court of Champaign County (60, 268).

In her petition, Appellant invoked, as violated, the First and Fourteenth Amendments of the United States

* References are to page numbers of Transcript of Record unless otherwise indicated.

Constitution, provisions of Illinois Constitution (Art. II, Secs. 2, 3; Art. VIII, Secs. 1, 3) and various Illinois statutes (Ill. Rev. Stat. 1943, Ch. 122, Secs. 286, 123, 122; Ill. Rev. Stat. 1939, Ch. 122, Secs. 136, 122, 297a and Ch. 38, Sec. 128k), which she quotes (2, 4, 10-11, 13-15). She specifically alleged violation of the principle of separation of church and state (8). These questions were passed on by the Illinois Courts (71-3, 270-9). The essential facts bearing on questions discussed herein seem not in issue.

Religious education classes for public school pupils have been established and maintained for several years in the public school buildings of Champaign, Illinois, during regular school hours under arrangements made between Appellee, Board of Education, and "The Champaign Council of Religious Education", a religious organization made up of representatives of Roman Catholic, Jewish and some Protestant faiths (40-2, 61, 268).

Appellee granted permission for and agreed to cooperate with the plan of said Council for such religious teaching in School District No. 71, which includes all public schools and school buildings in Champaign. This action was taken at a regular meeting on June 6, 1940, and was recorded in minutes of the Board (127-9). Appellee delegated to the Superintendent of Schools the making of all arrangements and the supervision of the religious education program (127-8, 130).

The Council consists of churchmen, lay and clerical, who sought permission of the School Board for and are interested in promoting teaching of religion in the Champaign public schools. It is financed by churches. Not all denominations are represented—only about six of the larger Protestant denominations (92, 129, 156-7, 159). Some oppose the plan (187-8, 216).

The record describes this Champaign plan, as conceived and operated. Public school teachers distribute to pupils "Parents' Request Cards" (176) for parents to sign requesting permission for their children to attend religious education classes. Thereon they check the class desired—"Interdenominational", "Protestant", "Roman Catholic" or "Jewish"—and also indicate "Parents' Church". When returned to the school teachers these cards are given to the religious teacher (94, 175-6, 130, 133, 145, 147-8, 253).

Teachers of religion are not public school teachers but are selected by or through the Council or its constituent denominations and are sent into the schools. The religious work in the schools is directed by a Protestant religion teacher. She makes detailed arrangements with the school principals and teachers for the conduct of religion classes. Protestant teachers are paid by the Council. Catholic and Jewish teachers are not. Religious teachers are subject to approval by School Superintendent (91-3, 109, 127, 130, 150-7, 40-1, 44).

Some 35 religion classes are conducted in Grades 4 through 9 for 30 minutes a week in elementary schools and 50 minutes a week in junior high schools, in regular classrooms in school buildings during regular school hours at various times throughout the school day (91, 110-12, 132, 137, 147).

Protestant courses are taught by two teachers (91, 137). When the religion teachers enter the classrooms, pupils not taking the course leave with their school teacher, going to the office, rest room, library, recess room, music room, science room or hall or into the class of another teacher where they devote their time to regular studies. Appellant's son was required to do this. They cannot play or leave the building (92, 110-13, 114-5, 132-3, 137, 148,

254-7, 260-3). If the religious class is large it remains in the regular classroom and the others withdraw; if small, the religious class moves into another room (120, 137, 147-8). Sometimes, school teachers stay in their classroom during the religious teaching (92, 132-3, 137).

No Jewish or Catholic child attends Protestant classes, and vice versa. Protestant, Jewish and Catholic groups in the Council have their own curriculum, finance and personnel committees which act largely independently. Each group selects and prepares its own teaching material, oral and written (93, 156-7, 226, 93).

Protestant teachers use outlines, selections and compilations based on the King James Bible, and other sources, comment on and explain Bible passages, tell religious stories, teach lessons regarding "Faith", conduct examinations and play "Biblette" games (11-13, 49-50, 97-104). Cards, pictures, books, textbooks and mimeographed material are used (223, 101, 140). The saying of prayers is taught and prayers are learned and recited in class (102, 141). Some of these teachings are out of harmony with beliefs of other Protestant denominations and of Catholics, Jews, Rationalists, Free Thinkers (121, 124-5, 130-1, 148-50, 168, 217-22).

Catholic students are taught in a separate room by a priest, dressed in clerical garb, in conformity with Catholic doctrine and the Douay Bible (91, 51, 105, 150-1, 226). Jewish classes, held until two years ago, were taught under a rabbi in accordance with Judaism and the Old Testament (105, 224, 228-30). Lutherans too would teach their own faith if arrangements could be made (121-2).

Appellee concedes there are differences in creed and beliefs between those groups already engaged in this religious education program (123).

The Superintendent issues school bulletins advising teachers and principals to work out programs for religious courses with the religious teachers, which is done (111, 117). Schedules given students from principals' offices show rooms designated for religious education (153). The school issues printed schedules to junior high school students on which they note an election to take "religious education" (233-4). Religion teachers make attendance reports to Superintendent (238).

Religious teachers use, without charge, regular school classrooms, blackboards, chairs, desks, tables, light and heat (133-4). "Request cards" were mimeographed in a school office by a clerk paid by Appellee (117, 197, 240).

The Superintendent says the schools are open to all denominations, but the School Board has an "unwritten reservation" that religion teachers must teach "properly" and in proper English; and he has given no thought to whether the schools can provide space for all denominations to teach during school hours (118-9).

The classes previously were taught in churches and if religious teaching in the schools is prohibited they will go on anyway, regardless of where they are taught (158, 226).

Appellant is a "Rationalist", disbelieving the religious teaching of Protestant, Catholic and Jewish faiths (208). She opposes the Champaign system as being undemocratic, calling attention in public to differences in creed and race, beyond the competency of public schools and defeating the constitutional principle of separation of church and state. Her protests, before suit, went unheeded (193-5, 201, 211, 15-6).

POINT I

The teaching of sectarian religion by religious teachers to public school students in public school buildings during school hours violates the First Amendment of the Federal Constitution as applied through the Fourteenth Amendment and the basic doctrine of separation of church and state inherent therein.

We respectfully submit that the action of the Appellee Board of Education, in permitting and in aiding and cooperating in the teaching of sectarian religion to pupils of public schools in school buildings during regular school hours by religious teachers sent in for that purpose is a clear violation of the fundamental American principle of separation of church and state and the constitutional prohibition respecting an establishment of religion.

Appellee's action is an act legislative in character given sanction by the State. (*Hamilton* v. *Board of Regents*, 293 U. S. 245.)

The First Amendment of the Federal Constitution as read into the Fourteenth Amendment, makes invalid any State law "respecting the establishment of religion or prohibiting the free exercise thereof." *Everson* v. *Board of Education*, 330 U. S. 1, 8, 5, 15.

The States and all their agencies are as incompetent as Congress to enact laws or give sanction to acts legislative in character which are in conflict with the prohibitions of the First Amendment. They cannot, through school policy, invade these rights secured to every United States citizen. (*Cantwell* v. *Connecticut*, 310 U. S. 296, 303; *Douglas* v. *Jeannette*, 319 U. S. 157, 162; *Murdock* v.

Pennsylvania, 319 U. S. 105, 108; *Board of Education* v. *Barnette,* 319 U. S. 624, 637, 639; *Everson* case, Jackson, J., at pp. 21-2.) Boards of Education must observe these constitutional limitations. (*Barnette* case, *supra,* at p. 637, overruling *Minersville District* v. *Gobitis,* 310 U. S. 586).

No mere issue of "educational policy" is involved here and this Court does not have to become "the school board for the country" to insist that local school authorities and school legislation conform to constitutional limitations. When liberty is infringed in public education, this Court will act. (Cf. *Gobitis* case, *supra,* at p. 598; *Barnette* case, *supra,* at pp. 637, 640, 642.)

The freedoms of religion in the First Amendment are in a preferred position and may not be infringed on slender grounds. (Cf. *Barnette* case, *supra,* at p. 639; *Murdock* case, *supra,* at p. 115.) The freedom involved here was first in the Bill of Rights because it was first in the minds of our country's forefathers. (Cf. *Everson* case, Jackson, J., *supra,* at p. 26.)

The purpose of the religion clause of the First Amendment, as viewed in the light of its generating history, is manifest. It was designed to bring about the complete separation of church and state—to keep religion outside the sphere of political government. That doctrine is cardinal in the history of this nation and for the liberty of our people. (Cf. *Barnette* case, *supra,* Frankfurter, J., at pp. 654-5.) It was and is an American doctrine, not one of foreign importation. It was a "new world" idea, born in revolution and out of the age-old, bitter, unceasing turmoil and strife between church and state in the Colonies and abroad.

The problems of today were fully known and experienced in essentially similar manifestations in our Colonial

history and had led, after a century-and-a-half struggle for religious freedom and the separation of church and state, to the framing and adoption of the First Amendment. Jefferson characterized this struggle as the "severest contests in which I have ever been engaged" (Jefferson Autobiography, Vol. I, pp. 53-9).

The background history was sketched in our brief in the *Everson* case. It has been set forth fully in the opinions there. It need not be repeated. This principle was embodied, not only in the Federal Constitution, but in the various State Constitutions, including that of Illinois, and examination thereof proves that nothing has been more plainly or resolutely expressed than the determination of the citizens of the States and of the United States to preserve and perpetuate religious liberty and the separation of church and state, and to guard against the slightest approach toward infringement thereof.

Although this Court's decision in the *Everson* case has created controversy and misgivings in its application of the broad principles to the facts there, it did sum up quite clearly the principles underlying this clause of the First Amendment. In respects material here, it stated:

> "The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government * * * can pass laws which aid one religion, aid all religions, or prefer one religion over another. * * * No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and *vice versa*. In the words of Jefferson, the clause against estab-

lishment of religion by law was intended to erect 'a wall of separation between church and State.'" (At pp. 15-16.)

* * * * * * *

"* * * That Amendment requires the state to be a neutral in its relations with groups of religious believers and non-believers * * *. State power is no more to be used so as to handicap religions than it is to favor them." (At p. 18.)

* * * * * * *

"The people there (in Virginia), as elsewhere, reached the conviction that individual religious liberty could be achieved best under a government which was stripped of all power to tax, to support, or otherwise to assist any or all religions, or to interfere with the beliefs of any religious individual or group." (At p. 11.)

The Court said (at p. 15) there is every reason to give the same application and broad interpretation to the "establishment of religion" clause as has been given by this Court in its decisions concerning an individual's religious freedom and it added as to the interrelation of these complementary clauses:

> "The structure of our government has, for the preservation of civil liberty, rescued the temporal institutions from religious interference. On the other hand, it has secured religious liberty from the invasion of the civil authority."

The issues here can and should be resolved against Appellee on the principles thus stated. But the discerning statements of the dissenting justices also demand attention. The split in the Court seemingly was not in basic principles but in applying the principles to the facts.

Mr. Justice Jackson certainly was correct in asserting that the effect of this Amendment "was to take every form of propagation of religion out of the realm of things which could directly or indirectly be made public business and thereby be supported in whole or in part at taxpayers' expense", and that "it was intended not only to keep the states' hands out of religion, but to keep religion's hands off the state, and, above all, to keep bitter religious controversy out of public life" (at pp. 26-27).

Mr. Justice Rutledge was equally right when he stated:

> "The Amendment's purpose . . . was to create a complete and permanent separation of the spheres of religious activity and civil authority by comprehensively forbidding every form of public aid or support for religion (at pp. 31-2).
>
> . . . . . .
>
> The prohibition broadly forbids state support, financial or other, of religion in any guise, form or degree. It outlaws all use of public funds for religious purposes" (at p. 33).
>
> . . . . . .
>
> "The reasons underlying the Amendment's policy have not vanished with time or diminished in force. . . . There cannot be freedom of religion, safeguarded by the state, and intervention by the church or its agencies in the state's domain or dependency on its largesse. Madison's Remonstrance, Pars. 6, 8" (at p. 53).

The public schools of this country, including those of Illinois, are set up and governed by the civil authority. They are temporal institutions. School boards are civil, state agencies.

Historically, the principle of separation of church and state was carried over into the field of education. The

same spirit that manifested itself in opposition to state control or support of religion directly likewise bred opposition to state support of sectarian schools. If education was to be religious, it must be carried on by the churches and without the support of the state. With the demand for an educational system supported by the state came a similar demand that such education be non-sectarian.[1]

Our public school is a relatively recent development, dating from about 1840. It is organized on the premise that secular education can be isolated from all religious teaching so that the school can inculcate all needed temporal knowledge and also maintain a strict and lofty neutrality as to religion. (*Everson* case, Jackson, J., at p. 24.) The strife among the religious sects, the struggle of each denomination to impose its theological beliefs on the school youth, the public resistance, the demands of labor and the spirit of Jacksonian democracy, all combined to give effect to the demand for general public schools which would be free, tax supported and non-sectarian.[2]

The Courts repeatedly have recognized the secular character of public schools. Just recently in *City of New Haven* v. *Town of Torrington*, 132 Conn. 194, 43 Atl. (2) 455, it was said:

> "There are two essentials that must be present to constitute a school a public school. It must remain under the exclusive control of the state through the state's constituted agencies, and it must be free

1. Johnson, *"The Legal Status of Church-State Relationships in the United States"*; Univ. Minn. Press, 1934, pp. 15-22, 152.

2. Beard "The Rise of American Civilization", pp. 810, 813; Cubberley, Public Education in the United States (1934) ch. VI; Knight, Education in the United States (1941) ch. VIII.

from sectarian instruction * * *. The principle is implicit in all public school systems that they must be under public control and secular in instruction."

Judd v. *Board of Education*, 278 N. Y. 200, 210-11:

"While a close compact had existed between the Church and State in other governments, the Federal government and each State government from their respective beginnings have followed the new concept whereby the State deprived itself of all control over religion and has refused sectaries any participation in or jurisdiction or control over the civil prerogatives of the State. And so in all civil affairs there has been a complete separation of Church and State jealously guarded and unflinchingly maintained. In conformity with that concept, education in State supported schools must be non-partisan and non-sectarian. This involves no discrimination between individuals or classes. It invades the religious rights of no one. Denominational religion is merely put in its proper place outside of public aid or support."

So too in Illinois (*People ex rel. Ring* v. *Board of Education*, 245 Ill. 334, 349), it was said:

"The public school is supported by taxes which each citizen, regardless of his religion or his lack of it, is compelled to pay. The school, like the government, is simply a civil institution. It is secular, and not religious, in its purposes."

This Court (*Barnette* case, *supra*, at p. 637) said:

"Free public education, if faithful to the ideal of secular instruction and political neutrality, will not be partisan or enemy of any class, creed, party, or faction."

Education in public schools under this Champaign plan is not secular or non-sectarian. It is an admixture of secular and sectarian. Appellee admits, as to the religion taught, there are differences in creed and belief between those already engaged in this religious education program, including Jewish, Catholic and various Protestant faiths (123).

The record shows the character of religious courses given there (5-7, 11-13, 66-7, 93-105, 139-144). The nature of teachings and material used in Jewish and Catholic classes does not appear, except they accord with their respective faiths, the Jewish groups denying divinity of Christ and the Catholic classes teaching Catholic doctrine.

Protestant courses teach material selected and approved by the several dominant Protestant denominations in the Council, including Methodists, Presbyterians, Episcopalians, Baptists, Disciples of Christ and Congregationalists (92, 129).

Quite clearly, the Protestant teachings are inconsistent, in a number of respects, with doctrines and beliefs of Catholicism and Judaism and of other Protestant denominations such as Lutherans, Quakers, Christian Scientists, Unitarians, Jehovah's Witnesses and Interdenominationalists and entirely inconsistent with those of Rationalists and Free Thinkers (121, 124-5, 130-1, 148-50, 168, 217-22, 229-30). Protestant teachers teach the divinity and messiahship of Jesus, the resurrection of Jesus, the miracles, faith healing, the foretelling of future events by prophets, the everlasting life, the resurrection of the body, the efficacy and power of prayer, baptism, salvation, the Bible is the Word of God, et cetera.

Instruction in any of such subjects is necessarily sectarian, because, while it may be consistent with the

doctrines of one or more sects, it will be inconsistent with the doctrines of others. The Bible itself is a sectarian book to non-Christians and certain versions thereof are regarded as sectarian books by different Christian denominations. This was recognized in *People ex rel. Ring* v. *Board of Education*, 245 Ill. 334, 92 N. E. 251, *supra*.

The Bible contains innumerable passages which are doctrinal and upon which particular creeds of various religious sects are based. Sectarianism has resulted from the infinite variety of differences of opinion regarding the truth, authority, emphasis, meaning and interpretation of Biblical passages. Each sect, as it has arisen, has assumed that it alone possesses the revelation and the truth. The process of religious schism has been going on continuously for ages, and continues. These differences and objections may seem light and trivial, but history has been made over the controversies that have arisen from them. (See *People ex rel. Dearle* v. *Frazier*, 102 Wash. 369, 376; 173 Pac. 35; *State ex rel. Weiss, et al.* v. *District Board*, 76 Wis. 177, 194-5; 44 N. W. 967.) The Fathers of the Constitution were not unaware of the varied and extreme views of religious sects, of the violence of disagreement among them, and of the lack of any one religious creed on which all men would agree, and they, therefore, fashioned a charter of government which envisaged the greatest possible toleration of conflicting views. (*U. S.* v. *Ballard*, 322 U. S. 78, 87.)

Obviously, the public school is not the proper place for sectarian teachings. As was said in *People ex rel. Ring* v. *Board of Education, supra* (at p. 349): "Religion is taught, and should be taught, in the churches, Sunday schools, parochial and other church schools and religious meetings. Parents should teach it to their children at

home, where its truths can be most effectively enforced." (To the same effect, see *State ex rel. Weiss, et al.* v. *District Board, supra,* at p. 202; *Stein* v. *Brown,* 125 Misc. (N. Y.) 692, 697.)

Parents who desire their children to have sectarian education need not rely and cannot impose upon the public schools for it. The church and the home are free to teach and practice religion. Parents have the right to send their children to sectarian schools, even against an assertion of state power which would try to compel all children to attend public schools. (*Prince* v. *Massachusetts,* 321 U. S. 158, 165; *Pierce* v. *Society of Sisters,* 268 U. S. 510.) Such child has the same right as any other to attend public school. The same guaranty which assures this freedom forbids the public school or any agency of the State to give or aid the child in securing the religious instruction he seeks. Were such a child to accept the public school, he would be the first to protest the teaching there of any creed or faith not his own. It is precisely for the reason that their atmosphere is wholly secular that children are not sent to public schools under the *Pierce* doctrine. But that is a constitutional necessity, because we have staked the very existence of our country on the faith that complete separation between the state and religion is best for the state and best for religion (*Everson* case, *supra,* at p. 59, Rutledge, J.).

A parent has no more right to request the state to enter into the realm of religion in education, for the sake of the child, than the state has to request the parent to depart from that realm for the same reason.

Nothing in this record indicates that this plan of religious education in public schools was conceived or demanded by the parents of the school children. Rather,

it was inspired and promoted, sincerely no doubt, by a group of ministers and church laymen who organized the Religious Council and sought the approval and cooperation of the School Board for their plan (92, 128).

The School Board not only gave permission but has cooperated and assisted in carrying the plan into effect. It has been made part of the public school program. All arrangements were made by the Superintendent to whom supervision of it was delegated. The Superintendent, and all the principals and teachers at his request, have been cooperating in carrying out the plan.

The logical ends of this Champaign plan show the error of its beginnings. While the Superintendent testified the school buildings are available to all religious denominations when they are being used by students, with permission of the Board, he had "not given any thought to whether the schools can furnish sufficient space for all denominations to teach during school hours" (119).

If any denomination is given the privilege of thus using the schools, every denomination must be extended that privilege. If this plan is upheld as constitutional for Champaign it must be approved for school districts everywhere, including the largest school districts in metropolitan areas where live folk of every race, creed, color and national origin.

The Federal Census of 1936, which was incomplete, reported 256 religious denominations in continental United States alone. There are probably many more. A study of the number and variety of these sects and of the doctrines and beliefs peculiar to each one is a revelation. It shows that the religious history of the United States is an ecclesiastical fecundity carried to a point which must distress any theologically minded Malthus. About

52 of these religious bodies have 50,000 members or over.[3] A recent book[4] contains a revealing study and shows the extremities in beliefs of eight of the most significant, little-known religious groups in America, said to represent what 15,000,000 of our citizens believe and practice, to wit: Jehovah's Witnesses, The Four-Square Gospel, Spiritualism, Oxford Group-MRA, Kingdoms of Father Divine, The Baha'i Faith, Unity and Psychiana.

Suppose all or any number of the 256 Christian sects, including said eight more unorthodox groups, as well as numerous non-Christian religions, were to seek to teach their faiths in the public schools. The beliefs of most of them are so diverse, each would need a separate classroom. None could be excluded without discrimination. Under one public school roof we would have Jehovah's Witnesses denouncing Protestants and Catholics and teaching opposition to the flag salute (Cf. *Cantwell* and *Murdock* cases, *supra*), Christian Scientists teaching the futility of medical practices, Quakers teaching pacifism, Spiritualists giving or teaching spirit messages and Father Divinites teaching the reappearance of God on earth. Religious instruction would be based not merely on different versions of the Bible—Protestant, Catholic and Jewish—but on the various sacred books of the East and on some of our native sacred books, such as "Book of Mormon" and "Science and Health with Key to the Scriptures" and "Watchtower."

The public school houses during school hours would become a bedlam of sectaries and a Babel of religious

3. See U. S. Dept. of Commerce, Bureau of Census, Report on Religious Bodies 1936; Yearbook of American Churches (Landis 1943); "Religion in America" by Dean Willard L. Sperry (Macmillan Co. 1946), especially Chapters V and VI on "The Denominations" and appendices.

4. "They Have Found A Faith" (Bobbs-Merrill Co. 1946), Prof. Marcus Bach of Iowa Univ. School of Religion.

tongues, spawning discord, intolerance, bigotry and hatred. They would be flooded with sectarian publications, crowded with religious teachers, many in clerical garb. Pupils would be classified and segregated according to their diverse beliefs or lack of belief. There would not be enough rooms to hold all the classes. The public school system for all practical purposes would cease to exist and its ideal of secular education would be a mockery.

In principle there can be no essential difference between a public school where secular and sectarian education is taught and a denominational school where sectarian and secular education is taught. By such commingling the line historically separating public schools from private, religious schools becomes blurred beyond recognition. It is all "religion" (cf *Everson* case, *supra*, p. 33).

The commingling and unification of sectarian and secular education in public schools has been attempted before in this country in various forms, guises and degrees, and no doubt will become widespread should this Court approve this latest breach. The Champaign plan is merely the newest form of commingling, but involves the same violation of basic principle. Supreme Courts of various states having constitutional and statutory provisions similar to those in Illinois, have adhered to the principle and refused to sanction such commingling. (See *People ex rel. Ring* v. *Board of Education, supra; People ex rel. Dearle* v. *Frazier, supra; State ex rel. Weiss, et al.* v. *District Board, supra; Knowlton* v. *Baumhover*, 182 Iowa 691; 166 N. W. 202; *Harfst* v. *Hoegen*, 349 Mo. 808; 163 S. W. (2) 609; *Williams* v. *Bd. Trustees Stanton C.S.D.*, 173 Ky. 708; 191 S. W. 507; *Herold* v. *Parish Board of School Directors*, 136 La. 1034; 68 So. 116; *State*

v. *Scheve*, 65 Neb. 853; 91 N. W. 846; 65 Neb. 876; 93 N. W. 169; Cf. *Smith* v. *Donahue*, 202 App. Div. (N. Y.) 656, 660.)

In those cases, the Judges, who have written the pioneer opinions in this field, exhibited great wisdom and clear vision. It would unduly lengthen this brief to discuss the facts of each case or to quote the many excellent statements therein. We note merely a few.

The *Ring* case, *supra*, stated:

> "The public schools are supported by taxation, and if sectarian instruction should be permitted in them, the money used in their support would be used in aid of a sectarian purpose. (p. 340)
>
> * * * * * * *
>
> "The only means of preventing sectarian instruction in the schools is to exclude altogether religious instruction, by means of the reading of the Bible or otherwise." (p. 348)

Knowlton v. *Baumhover*, *supra*, asserted:

> "If there is any one thing which is well settled in the policies and purposes of the American people as a whole, it is the fixed and unalterable determination that there shall be an absolute and unequivocal separation of church and state, and that our public school system, supported by the taxation of the property of all alike—Catholic, Protestant, Jew, Gentile, believer, and infidel—shall not be used, directly or indirectly, for religious instruction" (p. 704).

State v. *Scheve*, *supra*, stated:

> "The teaching of religion would mean teaching the system of faith and worship of one or more of the religious sects; it would mean sectarianism in the

> public schools, and to put sectarianism into the schools would, according to the opinion prevailing when the constitution was ratified, be to put venom into the body politic." (p. 879)

People ex rel. Dearle v. *Frazier, supra,* stated:

> "To compromise opinion in these matters is to lead to confusion which would make the courts the arbiter of what is and what is not religious worship, instruction, or influence, which would be as intolerable to the citizen as it would be to leave a decision to a school board." (p. 381)

These cases can be distinguished in detailed facts but not in principle. Whatever the form or degree, all involve efforts to inject sectarian religion into public schools. It is of no materiality that the pupil may be excluded or excused from participation in the sectarian instruction. If the instruction is such that certain pupils must be excused or segregated because it is hostile to their or their parents' beliefs then such instruction is sectarian and forbidden by the Constitution. (See the able discussions on this point in the *Ring, Herold, Weiss, Harfst,* and *Knowlton,* cases, *supra.*)

Manifestly, we believe, the action of the Champaign School Board violates the principles underlying the First Amendment. Appellee's action aids one or more religions and if carried to its logical conclusion, would aid all religions. So far as the Board accords special permission to the religions represented in the Religious Council and places conditions in the administrative process on other religions and their teachers, it prefers one religion over another.

The State of Illinois, through this school system, is not being neutral in its relations to groups of believers

and non-believers. It is using its civil power to favor religions and particular religions. It is supporting and otherwise assisting some or all religions and religious activities. It has failed to rescue the temporal institution of the public school from religious interference. It has made man's relation to his God the concern of the State. It has made public business out of private business. It has fused spheres of religious activity and civil authority.

The Constitution and statutes of Illinois, which are similar to those found in many other States (see Appendix annexed hereto), explicitly and firmly express the determination of its citizens to adhere to the principles mentioned above. Its free schools were organized as places where its children could receive a good "common school education". Attendance thereat is not required by children desiring a private or parochial school education. The free exercise of religion, without discrimination, is guaranteed; no person is required to support any ministry against his consent; no preference is to be given by law to any religious denomination and no civil right is to be denied on account of religious opinions.

No School District can ever make any appropriation or pay from any public fund whatever, anything in aid of any sectarian purpose or to help support or sustain any school controlled by any sectarian denomination; and no grant of land, money or personal property can be made by a School District for any sectarian purpose. School Districts are permitted to grant temporary use of school houses for religious meetings and public schools only "when not occupied by schools".

The Constitution and statutes are clear enough in their terms and purposes and spell out a complete and uncom-

promising separation of church from state. It is the Illinois courts that have swerved from the path and have attempted by judicial decision to amend or change the fundamental state laws. But if the Illinois statutory and constitutional provisions have been correctly construed by its Supreme Court which sustains the validity of the practices involved here, they are in direct conflict with the supreme law of the land as embodied in the Federal Constitution.

POINT II

The use, directly or indirectly, of public funds for purposes of sectarian instruction is in violation of said constitutional provisions.

The Illinois courts found no "direct" appropriation or expenditure was made by Appellee for or on behalf of said religious education classes, but "to some slight extent" Appellee "has indirectly appropriated public funds for the use of these classes, by the furnishing of rooms in public school buildings, light, heat, janitor service, and so forth" (69-70, 275).

The record shows not only that the School Board made available school rooms, furnishings and utilities for about 35 religion classes every week, but that the schools printed schedules and mimeographed cards and bulletins and conducted correspondence in connection therewith; also, that Superintendent, principals and teachers spent some of their time supervising and arranging for these classes and attending said classes or taking care of the students excused therefrom and in keeping and handling cards and records incidental thereto, all of which time otherwise would be spent on the regular secular activities

of the schools. Their time is paid for by the School District. These sectaries are saving expenses for class facilities at the taxpayers' expense.

Obviously, a proportionate share of Appellant's taxes are being used to support these schools and to aid and assist the conduct of religious instruction therein. That instruction is contrary to Appellant's own beliefs and tinges the public schools with sectarianism. Appellant urged this to be an improper use of public funds in violation of the Federal Constitution, and also of the Illinois Constitution and statutes specifically providing that no person should be required to support any ministry against his consent, that no School District shall pay from any public fund "anything" in aid of any sectarian purposes or donate land, money or personal property for any sectarian purpose (Ill. Const. Art II, Sec. 3; Art. VIII, Sec. 3; Ill. Rev. Stat. 1943, Ch. 122, Sec. 286).

Since the public schools are supported by taxation, money used for their support is used in aid of a sectarian purpose if sectarian instruction is permitted in them. And the prohibition of such use of public funds is therefore a prohibition of the giving of sectarian instruction in public schools (*People ex rel. Ring* v. *Board of Education, supra*, at p. 340; Cf. *Everson* case at pp. 44-7).

The Supreme Court of Illinois dismissed the point on the maxim *de minimis non curat lex*. These practices seemingly violate said state laws. They clearly violate the First Amendment.

The First Amendment, as read into the Fourteenth, has stripped government of all power to tax, to support or otherwise to assist any or all religions. No person, either believer or non-believer, can be taxed to support a religious institution of any kind. "To compel a man to furnish contributions of money for the propagation of opinions

which he disbelieves is sinful and tyrannical" (Virginia Statute of Religious Freedom). No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt, to teach or practice religion. Illinois and its agencies cannot consistently with the "establishment of religion" clause contribute tax-raised funds to support institutions, such as these public schools, which teach the tenets and faith of one or more denominations (*Everson* case, pp. 11-13, 16).

As Mr. Justice Jackson said in the *Everson* case, *supra*, (at p. 27) religious teaching cannot be a private affair when the State seeks to impose regulations which infringe on it indirectly, and a public affair when it comes to taxing citizens of one faith to aid another, or those of no faith to aid all; and as Mr. Justice Rutledge stated (at pp. 32-3, 40-1, 44-5, 48-9) the prohibition is against state support, financial or other, of religion in any guise, form or degree and all use of public funds for religious purposes. It is not the amount but the principle of assessment that is wrong. Madison said not even a "three pence" contribution, meaning a nominal amount, was to be exacted from any citizen for any such religious purpose. Whether the use or aid is large or small, direct or indirect, is immaterial and merely a matter of degree.

The prohibition against exacting money from a person for the dissemination of religious opinions contrary to his beliefs is absolute for whatever measure brings that consequence and whatever amount may be sought or given to that end. A taxpayer who embraces no creed or a different creed should not be forced to pay taxes for aiding religious teaching in which he does not believe. The matter is not one of quantity to be measured by the amount of money expended.

The Illinois courts recognized the assessment but evaded the constitutional principle on the ground that the assessment was too trifling for their notice. We believe, with Madison, that nothing is too trivial or indirect when its disregard involves a violation of basic constitutional principle.

It will be a sad day in our history if and when courts of final jurisdiction apply the *de minimis* maxim in evasion of the principle of separation of church and state and other basic freedoms.

A small exaction and use begets a larger exaction and use and an indirect use of public funds is soon followed by a more direct use thereof. This is obvious from a study of history and of prior state legislation and decisions (cf. *Thomas* v. *Collins*, 323 U. S. 516, 543; *Everson* case, at pp. 48-50).

In other cases involving a commingling of secular and sectarian education in public schools and similar constitutional and statutory provisions, state courts have prohibited such types of aid and support. (Cf. *People ex rel. Ring* v. *Board of Education, supra*, *Knowlton* v. *Baumhover, supra*; *Harfst* v. *Hoegen, supra*; *Williams* v. *Bd. Trustees Stanton C.S.D., supra*; *People ex rel. Dearle* v. *Frazier, supra*; *State ex rel. Weiss, et al.* v. *District Board, supra*; *Judd* v. *Board of Education, supra.*)

As was said in *Harfst* v. *Hoegen, supra*, at page 817:

> "The constitutional policy of our State has decreed the absolute separation of church and state, not only in governmental matters but in educational ones as well. Public money, coming from taxpayers of every denomination, may not be used for the help of any religious sect in education or otherwise."

An appropriation which would be unlawful by direct action may not be lawfully accomplished by indirection. If so, circumvention would attain a new use.

POINT III

The action of the School Board cannot be justified on the theory that it constitutes public welfare legislation.

In the *Everson* case, the act of a public school board (composed largely of parents of parochial school pupils) in using public funds for transportation of school district children to both public and Catholic parochial schools was justified on the ground it was "public welfare" legislation. In our brief for rehearing, we expressed grave concern lest such rationalization would lead to further breaches.

The Federal Constitution was established by all the people of the land to "insure domestic Tranquility" and to "promote the general Welfare" and to secure the blessings of liberty to posterity (Preamble). It could not have been adopted without the promised inclusion of the Bill of Rights.[5] The First Amendment is in promotion of the "general welfare" of the entire country, which transcends any public welfare of local States or school districts. The rights of all United States citizens should not be curtailed on the theory that that is necessary for the public welfare of one State's citizens. What is involved here is a "national right, federally guaranteed." (Cf. *Thomas* v. *Collins, supra*, at p. 543.) Any construction of the First Amendment which exempts what is called "public welfare legislation" for a State may be

5. "The Making of the Constitution", Charles Warren (1937, Little Brown & Co.), p. 510.

readily turned into an instrument disruptive of the "domestic tranquility" and the "general welfare" for which the Federal Constitution was ordained.

There is nothing in the testimony of the school officials here to indicate what motivated their action.

A clergyman connected with the Religious Council said the religion classes conducted in churches were not "accessible to a sufficiently large percentage of children of school age" and could be made more accessible if held in school buildings. He suggested the Council was interested in problems of juvenile delinquency, and thought its plan was in line with the general spirit of American democracy and religious tolerance (158-160).

However, the Council's President stated, the stopping of religious teaching in the schools would not be of any particular concern because the courses would go on anyway regardless of where taught (226).

Manifestly this plan was motivated by a desire of the Council to extend the field of its religious education from churches into public schools so more children could be reached. Implicit is an admission that the churches had failed to attract children. They realized that religion classes would be better patronized if held under the sponsorship of the school authorities and in schools where children were under compulsion to attend. Churches realize the value of early indoctrination (cf. *Everson* case at pp. 22-3, Jackson, J.). But churches, jointly or severally, can conduct religion classes on their own property after public school hours and on non-school days, such as Saturdays, Sundays and vacations and parents desiring such religious instruction for their children can send them to such classes freely or to a sectarian school.

Certainly, the injection of sectarian religion classes in public schools for some pupils whose parents desire them to have such education is not in the interest of the public generally and cannot possibly be regarded as "public welfare legislation" in any sense. It would be just as logical for school districts, in the "public welfare", to support and assist denominational schools in which pupils receive religious and secular education.

Religion is not a civil function or a public matter. An education which includes religious teaching is a private matter and function. We think this case emphasizes the fallacies and dangers inherent in the "public welfare-public function" thesis, as pointed out by the minority in the *Everson* case (pp. 19-21, 49-58).

Practically every effort by states and their agencies to break down the wall separating church from state is justified, at least in words, on the ground that it is in aid of the general public welfare or of some broad phase of the police power. History teaches that there have been few infringements of liberty by the state that have not been justified in the name of righteousness and the public good. (*Gobitis* case, *supra*, p. 604, Stone, J.) The real purpose is always glossed over and screened. That is apparent from a study of State statutes and decisions in this field. The approach seldom, if ever, is direct. It is invariably indirect. One rationalization leads to another. The time to stop the encroachment is when it starts. Compromises of principle invariably lead to confusion and more difficulties. An approval of the Champaign plan would seriously interfere with the general welfare and tranquility of the whole country.

POINT IV

Other violations of religious freedom are involved in this Champaign plan.

This plan, we believe, also conflicts with that part of the First Amendment which prevents school boards from interfering with free exercise of religion.

(1) Under this plan the School Superintendent becomes, in effect, a religious censor. While the schools are said to be open to all denominations, no sect or sectarian teacher can enter without the approval of the Superintendent. Applications to teach religion must be cleared through him. Number of pupils involved and location of their schools are criteria for approval. Supervision of religious education is delegated to him to "avoid conflict in the use of the schools" and "between the different denominations". It is his decision whether the schools can furnish sufficient space for all denominations, or any particular denomination, to teach during school hours. Religious teachers are not selected, as regular teachers are, on merit or on tests conducted by public authorities, but by the Religious Council. They are subject to his approval but there is an "unwritten reservation" that all religion teachers will teach "properly" and "in proper English". He is the "last word" (127). The plan's avowed policy is to prevent the use of "controversial or antagonistic" material.

On any of these grounds the Superintendent, on his own initiative, can exclude denominations. The effect is a religious censorship in him. Obviously, it is not possible for the various sects, if faithful to their own beliefs, to teach without using matter considered controversial

or antagonistic to other sects. This is not being done now by the Protestants, Catholics and Jews. All sects may not have teachers whose English is entirely satisfactory to a School Superintendent.

Membership in religious sects is not based on literary tests or teaching skills. Zeal, faith and belief are required. The Superintendent need not have arbitrarily exercised this power. The fact that he is authorized to decide the ultimate issue and to refuse access to the schools to certain denominations, for one such reason or another, is enough to invoke the protection of the First Amendment. It is the same type of authority as was disapproved in *Cantwell* v. *Connecticut*, 310 U. S. 296.

If such a device were sanctioned, there would be forged another ready instrument for the suppression of the faith of any unpopular minority. Repudiation of freedom would be complete (*Murdock* v. *Pennsylvania*, 319 U. S. 105, 116, *supra*).

(2) This plan also interferes with free exercise of religion by this parent and her son. Religious freedom is available to believers and non-believers alike (*U. S.* v. *Ballard*, 322 U. S. 78). This parent is compelled by law to send her child to a public school which she must help support. She has the right to expect that such school will be entirely non-sectarian and that sectarian instruction will not there be given or permitted by school authorities, and that her child will not be subjected, directly or indirectly, to any sectarian influence, or embarrassment or inequality in respect of privileges, rights, facilities and conditions and that he will not be required to take actions inconsistent with the completely free exercise of his beliefs.

True, Appellant's son is not required to attend religion classes. That is for parental choice. But he is compelled to attend public school and to be present there during periods of religious instruction. He must conform to the school regimen. He cannot play in or out of the building. He must study, in school, required, accredited, secular work while classmates are taking the non-required religious course and playing "Biblette" games therein. This has involved his being sent away from his classroom into a music room, library, hall or other place, often by himself, when religion teachers take over his regular classroom. This is a natural cause of embarrassment to a child. Minority groups taking particular religion courses are also classified and segregated. General attention thus is called in a public place to the beliefs or lack of belief, of pupils. It emphasizes differences in race and creed. It is undemocratic.

Under Federal and State Constitutions this parent and child are entitled to exercise and enjoy their beliefs without discrimination and not to be denied or restricted in any civil right or privilege on account of religious beliefs. They are entitled to equality of treatment. The right to attend a public school free from sectarian influence is one of their civil rights.

As was said in *People ex rel. Ring* v. *Board of Education, supra,* at page 351:

> "The exclusion of a pupil from this part of the school exercises in which the rest of the school joins, separates him from his fellows, puts him in a class by himself, deprives him of his equality with the other pupils, subjects him to a religious stigma and places him at a disadvantage in the school, which the law never contemplated. All this is because of his religious belief. If the instruction or exercise is such that certain of the pupils must

be excused from it because it is hostile to their or their parents' religious belief, then such instruction or exercise is sectarian and forbidden by the constitution."

See also *Knowlton* v. *Baumhover, supra; Harfst* v. *Hoegen, supra; Herold* v. *Parish Board of School Directors, supra;* and *State ex rel. Weiss* v. *District Board, supra.* As pointed out in all of the above cases, the fact that the child is not required to attend religion classes is not material. The fact that there is any reason for his exclusion is the thing that interferes with his religious freedom.

POINT V

Certain questions are not involved here.

The situation here does not involve mere reading of a Bible version in the schools, by compulsion or permission, or a system of releasing pupils from public schools for a brief period each week for religious instruction elsewhere or the use of public school buildings outside of school hours for religious purposes. Each of those situations raises important constitutional questions which need careful consideration when presented. Because not here presented they are not briefed by us but merely mentioned. We think, however, that they are also unconstitutional on the same general grounds here discussed.

Illinois has no statute requiring or even permitting Bible reading in the schools. There, by a statute, school districts may grant temporary use of public school houses for religious meetings and Sunday Schools "when not occupied by schools". And in *People ex rel. Ring* v. *Board of Education, supra,* the Court held that the prac-

tice of having Bible selections read, the Lord's prayer recited and hymns sung in public schools constituted sectarian and religious instruction in violation of Illinois Constitution and statutes—even though attendance thereat was not compulsory and provision was made for excusing certain pupils therefrom.

The authorities on the subject of Bible reading in the schools were collected in 5 A.L.R. 866 and 141 A.L.R. 1144. The subject is exhaustively discussed in "The Legal Status of Church-State Relationships in the United States" by Johnson (Univ. Minn. Press, 1934). See also 33 Corn. Law Quar. 122 (1947).

In some States, Bible reading in public schools is required, generally without comment.[6] Some states provide that the Bible may be read in public schools without comment.[7] Some states provide that the Bible may not be excluded from public schools.[8] In several of these states (Ark., Ga., Ia., Ky., N. D., Mass.) statutory provision is made for excusing pupils from Bible reading at parents' request.

Some states have statutes which permit public school buildings to be used temporarily for religious purposes or services, as well as for other purposes, when the buildings are not in use for school purposes and outside of

6. Ark. (Sec. 3614, Pope's Ark. Stat. 1937); Ala. (Code of Ala. Title 52, Sec. 542); Del. (Sec. 2758 Rev. Code of Del. 1935); Fla. (Fla. Stat. Ann. Sec. 231.09(2)); Ga. (Code of Ga. (1933) Sec. 32-705); Idaho (Ida. Code Ann., Sec. 32-2205-7); Ky. (Rev. Stat. (1944) Ch. 158, Sec. 170); Me. (Ch. 37, Sec. 127, Rev. Stat. of Me. (1944)); Mass. (Ann. Laws of Mass. Ch. 71, Sec. 31); N. J. (Title 18:14-77, Rev. Stat. of N. J.); Pa. (Title 24, Sec. 1555, Purdons Stat. Pa.); Tenn. (Sec. 2343 Will. Tenn. Code (1934)).

7. N. D. (Sec. 15-3812, N. D. Rev. Code (1943)); Kan. (Rev. Stat. 1935, Art. 18, Ch. 72, Sec. 1819).

8. Ind. (Sec. 28-5101 Burns Ind. Stat. (1933)); Iowa (Code of Ia. (1946) Sec. 280-9); Miss. (Const., Art. III, Sec. 18); Okla. (Title 70, Sec. 495, Okla. Stat. (1941)).

school hours.[9] Many more states have statutes which permit the use of such buildings outside of school hours and when not in use for school purposes, for civil, recreational and other community purposes, but not for religious purposes.[10] No state has statutes which permit the use of school buildings during school hours for religious purposes.

The system of releasing pupils from public schools for brief periods for religious instruction outside of school buildings, calls for passing comment merely because it is adverted to by the Illinois Courts in their opinions:

Ten States (Ind., Ia., Ky., Me., Mass., Minn., N. Y., Ore., Pa., So. Dak.) have laws permitting such practice (see Appendix annexed hereto). These are recent enactments. Illinois has no such statute.

However, the Illinois Supreme Court in *People ex rel. Latimer* v. *Board of Education*, 394 Ill. 228; 68 N. E. (2) 305 (1946), upheld a Chicago program by which public school childrer were excused upon parental request for one hour weekly to attend religious education classes held at churches away from school activities and property. The court distinguished the *Ring* case, *supra*, and justified the practice on the ground that no "part of the religious instruction is held in the schoolroom or on school property" (234). It also relied on *People ex rel. Lewis* v. *Graves*, 245 N. Y. 195. This latter case involved a plan by

9. Ind. (Sec. 28-3307 Burns Ind. Stat. 1933); Minn. (Sec. 125.06(7) Minn. Stat. Ann.); N. H. (Ch. 141, Sec. 22 Revised Laws of N. H. 1942); N. D. (Sec. 15-3514 N. D. Revised Code of 1943); Ohio (Sec. 4839-2, Pages Ohio Gen'l Code); Okla. (Tit. 70, Sec. 126, Okla. Stat. 1941); Ore. (Sec. 111-1021, Ore. Comp. Laws Ann.); Wash. (Sec. 4776, Remington's Revised Stats. of Wash.); Ill. (Sec. 123.817, Jones Ill. Stat.).

10. Ark. (Sec. 11616, Pope's Ark. Stat. 1937); Conn. (Sec. 954, Conn. Gen. Stats.); Fla. (Sec. 230.43(11), Fla. Stats. Ann.); Md. (Art. 77, Sec. 67, Ann. Code of Md.); Mass. (Ch. 71, Sec. 71, Ann. Laws of Mass.); Miss. (Sec. 6423, Miss. Code 1942); Mo. (Sec. 10337, Mo. Rev. Stats.); Neb. (Sec. 79-2138, Rev. Stats. of Neb. 1943); N. J. (Tit. 18:7-57 N. J. Rev. Stats.); N. M. (Sec. 55-1102, N. M. Stats. 1941); N. Y. (Sec. 414 Education Law); N. C. (Sec. 115-95 Gen'l Stats. of N. C. 1943); Pa. (Tit. 24, Sec. 773, Purdons Pa. Stat.); S. D. (Sec. 15.2110, S. D. Code of 1939); Tex. (Art. 2738, Vernon's Civil Stats.); Wisc. (Sec. 40.16, Wisc. Stats. 1945).

which school pupils of White Plains, N. Y. on parental request were excused once a week for the last half hour of the school session, which was a study period, so that they might attend churches or church schools for religious instruction. The New York Court pointed out that the White Plains plan did not interfere with the regular work of the school, the pupils lost no school recitation time and the plan operated outside the school building without requiring any participation in it by school teachers or authorities. The court said: "The separation of the public school system from religious denominational instruction is thus complete" (at p. 199). In another earlier New York case, *Stein* v. *Brown,* 125 Misc. 692 (1925), which has not been overruled, the court held unconstitutional a Mount Vernon, N. Y. plan for released time which was somewhat similar but involved the printing of cards used in connection therewith on school presses and time.

These cases offer a good example of how sectarianism creeps slowly step by step into the non-sectarian public school system. The *Latimer* decision was justified on the ground that the religious instruction is not held in the school buildings. The same court, in this case, goes one step further and says that the program approved in the *Latimer* case, while conducted outside of the school rooms, is to "all intents and purposes exactly the same as that involved in the instant case". By such gradual encroachments, caused by the courts' failures to adhere to basic principle and by temporizing from one situation to another, sectarianism now has been planted right in the center of public school buildings and classrooms during school hours and this, despite the fact that the existing Illinois Constitution and statutes, as well as the First Amendment, were designed to prevent that very thing.

POINT VI

This case has nation-wide importance.

Because of the application of the First Amendment to all United States citizens and because of similarities in constitutional and statutory provisions in the various States the decision in this case will have widespread significance.

In the Appendix hereto, we have collected the constitutional and statutory provisions in the 48 States that relate to the problem. Most are similar to those in Illinois.

The District of Columbia and all of the states, (except Me., N. H. and Vt.) have constitutional or statutory provisions, or both, against the use of public funds in aid or support of religious sects, institutions, instruction or sectarian purposes (see Appendix annexed hereto).

Fourteen states specifically prohibit the use of sectarian books in the public schools (Ariz., Cal., Ga., Ida., Ky., Md., Mass., Miss., Mont., Nev., N. H., N. M., N. D., Tex.—see Appendix). Nineteen states specifically prohibit sectarian instruction in the public schools (Ariz., Cal., Colo., Del., Ida., Kan., Ky., Me., Mont., Neb., Nev., N. J., N. M., Okla., S. D., Tex., Utah, Wisc., Wyo.—see Appendix).

The Constitutions of 36 states provide that no preference shall be given by law to any religious sect, denomination or mode of worship;[11] of 30 states that no one

11. Ala. (Art. I, Sec. 3); Ark. (Art. II, Sec. 24); Calif. (Art. I, Sec. 4); Colo. (Art. II, Sec. 4); Conn. (Art. VII, Sec. 1); Del. (Art. I, Sec. 1); Fla. (Decl. of Rts. Sec. 6); Idaho (Art. 1, Sec. 4); Ind. (Art. I, Sec. 4); Iowa (Art. 1, Sec. 3); Kan. (Bill of Rights, Sec. 7); Ky. (Bill of Rights, Sec. 5); La. (Art. 1, Sec. 4); Me. (Art. I, Sec. 3); Mass. (Art. of Amend. Art. XI); Minn. (Art. 1, Sec. 16); Miss. (Art. 3, Sec. 18); Mo. (Art. 2, Sec. 7); Mont. (Art. III, Sec. 4); Neb. (Art. I, Sec. 4); Nev. (Art. I, Sec. 4); N. H. (Part First, Art. 6th); N. J. (Art. I, Sec. 4); N. M. (Art. 2, Sec. 11); N. Y. (Art. 1, Sec. 3); N. D. (Art. I, Sec. 4); Ohio (Art. I, Sec. 7); Pa. (Art. 1, Sec. 3); S. C. (Art. I, Sec. 4); Tenn. (Art. I, Sec. 3); Tex. (Art. I, Sec. 6); Utah (Art. I, Sec. 4); Va. (Art. IV, Sec. 58); W. Va. (Art. 3, Sec. 15); Wisc. (Art. I, Sec. 18); Wyo. (Art. 1, Sec. 18).

shall be compelled to attend or support any place of worship or any ministry, sect, or denomination (see Appendix annexed hereto); and of 43 states that the civil rights, privileges and capacities of citizens shall not be denied or affected in any manner on account of their religious beliefs or opinions concerning religion.[12] A total of 47 states have one or more of the three above-noted variations.

In every State the organic and statutory laws were designed to carry into effect the principles inherent in the First Amendment. The state courts, in the main and until recent years, have remained faithful to their own constitutional provisions designed to protect religious freedom and to separate religions and governments. We believe this court will preserve that uniform purpose by striking down the attempt herein to evade it.

Conclusion

This case is one of first impression in this Court on the question of the introduction of religious instruction into public schools during school hours in relation to the First Amendment. It is not the first time commingling of secular and sectarian instruction in such schools has been attempted. It ought to be the last. The public school ideal of secular education and the inspired concept of separation of church from state should not be tarnished

12. Ala. (Art. I, Sec. 3); Ariz. (Art. II, Sec. 12); Ark. (Art. II, Sec. 24); Calif. (Art. I, Sec. 4); Colo. (Art. II, Sec. 4); Del. (Art. I, Sec. 2); Fla. (Decl. of Rts. Sec. 5); Ga. (Art. I, Par. XIII); Idaho (Art. 1, Sec. 4); Ill. (Art. II, Sec. 3); Ind. (Art. I, Sec. 5); Iowa (Art. 1, Sec. 4); Kan. (Bill of Rights, Sec. 7); Ky. (Bill of Rights, Sec. 5); Me. (Art. I, Sec. 3); Md. (Decl. of Rts. Arts. 36, 37); Mich. (Art. II, Sec. 3); Minn. (Art. 1, Sec. 17); Miss. (Art. 3, Sec. 18); Mo. (Art. 2, Sec. 5); Mont. (Art. III, Sec. 4); Neb. (Art. I, Sec. 4); Nev. (Art. I, Sec. 4); N. H. (Part First, Art. 5th); N. J. (Art. I, Sec. 4); N. M. (Art. 2, Sec. 11); N. Y. (Art. 1, Sec. 3); N. D. (Art. I, Sec. 4); Ohio (Art. I, Sec. 7); Okla. (Art. I, Sec. 2); Ore. (Art. I, Secs. 4, 6); Pa. (Art. I, Sec. 4); R. I. (Art. I, Sec. 3); S. D. (Art. VI, Sec. 3); Tenn. (Art. I, Sec. 4); Tex. (Art. I, Sec. 4); Utah (Art. I, Sec. 4); Vt. (Ch. I, Art. 3rd); Va. (Art. IV, Sec. 58); Wash. (Art. 1, Sec. 11); W. Va. (Art. 3, Sec. 15); Wisc. (Art. I, Sec. 19); Wyo. (Art. 1, Sec. 18).

by compromise. They invade the religious rights of no one. They assure religious freedom for all. They are uniquely American. Their great wisdom is proved again by the dire religious strifes abroad even now.

Two great drives are constantly in motion to abridge, in the name of education, the complete division of religion and civil authority which our forefathers made. One is to introduce religious education and observances into the public schools. That is this case. The other is to obtain public funds for the aid and support of various private religious schools. Both avenues were closed by the Constitution. Neither should be opened by this Court (*Everson* case, *supra*, Rutledge, J., at p. 63).

In the *Everson* case the Court said "the First Amendment has erected a wall between church and state", "that wall must be kept high and impregnable" and the Court "could not approve the slightest breach". That high resolve, if given full effect, will protect and preserve the liberties and principles inherent in the First Amendment in the way the Founders intended.

This case is one not of a slight breach but of a flagrant breach. The action of this school board not only "approaches" the verge of constitutional power—wherever that may be—it falls over the brink. If this breach were permitted the wall would be engulfed in a floodtide of breaches.

The decision of this Court in the *Everson* case left doubts in the minds of many and has caused great controversy. Once again this Court is presented with the opportunity of restating and applying the great principles of religious freedom and separation which, for the general welfare, were placed after many years of bitter struggle in the Constitution to become the supreme law of our land and to remain so, unless and until changed by our entire people in ways provided.

We respectfully submit that the decision of the Illinois Supreme Court should be reversed, with a forthright restatement of the broad, fundamental and democratic concepts above mentioned which are an integral part of our American heritage and way of life.

Respectfully submitted,

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APPENDIX

Summary of State Constitutional and Statutory Provisions

Alabama

The Constitution provides:

> "No money raised for the support of the public schools shall be appropriated to or used for the support of any sectarian or denominational school." (Art. 14, Sec. 263)
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> • • • • •
>
> "That • • • no preference shall be given by law to any religious sect, society, denomination or mode of worship; that no one shall be compelled • • • to pay any • • • taxes • • • for maintaining any minister or ministry; • • • that the civil rights, privileges and capacities of any citizens shall not be in any manner affected by his religious principles." (Art. I, Sec. 3)

Arizona

The Constitution provides:

> "No public money or property shall be appropriated for or applied to any religious worship, exercise, or instruction, or to the support of any religious establishment." (Art. II, Sec. 12)
>
> • • • • •
>
> "No tax shall be laid or appropriation of public money made in aid of any church, or private or sectarian school • • •" (Art. IX, Sec. 10)
>
> • • • • •
>
> "No sectarian instruction shall be imparted in any school or state educational institution that may

be established under this constitution;" (Art. XI, Sec. 7)

Chap. 54-1006, Ariz. Code Ann. provides:

> "Any teacher who shall use any sectarian or denominational books, or teach any sectarian doctrine, or conduct any religious exercises in his school * * * shall be guilty of unprofessional conduct, and the proper authority shall revoke his certificate."

Arkansas

A provision in Arkansas Constitution of 1868 (Art. IX, Sec. 1) that "no religious or other sect or sects shall ever have * * * control of any part of the school funds," apparently is still in force. (See Const. of 1874, Sec. 1.)

The Constitution (Art. II, Sec. 24) provides:

> "no man can, of right, be compelled to attend * * * or support any place of worship; or to maintain any ministry against his consent."

California

The Constitution provides:

> "Neither the Legislature, nor any * * * school district, * * * shall ever * * * pay from any public fund whatever, or grant anything to or in aid of any religious sect, church, creed, or sectarian purpose, or help to support or sustain any school * * * or other institution controlled by any religious creed, church, or sectarian denomination whatever; nor shall any grant or donation of personal property or real estate ever be made by the state * * * or other municipal corporation for any religious creed, church, or sectarian purpose, whatever * * *." (Art. IV, Sec. 30)

"No public money shall ever be appropriated for the support of any sectarian or denominational school, or any school not under the exclusive control of the officers of the public schools; nor shall any sectarian or denominational doctrine be taught, or instruction thereon be permitted, directly or indirectly, in any of the common schools of this State." (Art. IX, Sec. 8)

By Statute (Sec. 1672 Stat. and Amend. to Code of Calif.) it is provided:

"No publication of a sectarian, partisan or denominational character must be used in any school, or be made a part of any school library; nor must any sectarian or denominational doctrine be taught therein."

Colorado

The Constitution provides:

"Neither the general assembly, nor any * * * school district * * * shall ever * * * pay from any public fund or moneys whatever, anything in aid of any church or sectarian society, or for any sectarian purpose or to help support or sustain any school * * * controlled by any church or sectarian denomination whatsoever; nor shall any grant or donation of land, money or other personal property, ever be made by the state, or any such public corporation, to any church, or for any sectarian purpose." (Art. IX, Sec. 7)

"No religious test or qualification shall ever be required of any person as a condition of admission into any public educational institution of the State, either as a teacher or student; and no teacher or student of any such institution shall ever be required to attend or participate in any religious

service whatever. No sectarian tenets or doctrines shall ever be taught in the public schools * * * ." (Art. IX, Sec. 8)

"No person shall be required to attend or support any ministry or place of worship, religious sect or denomination against his consent." (Art. II, Sec. 4)

Connecticut

The Constitution provides:

"The fund, called the School Fund, shall remain a perpetual fund, the interest of which shall be inviolably appropriated to the support and encouragement of the public, or common schools throughout the State, and for the equal benefit of all the people thereof." (Art. VIII, Sec. 2)

"No person shall by law be compelled to * * * support * * * any congregation, church or religious association." (Art. VII, Sec. 1)

Delaware

The Constitution provides:

"No portion of any fund * * * for educational purposes, shall be appropriated to, or used by, or in aid of any sectarian, church or denominational school;" (Art. X, Sec. 3)

* * * * *

"No man shall or ought to be compelled to attend any religious worship, to contribute to the erection or support of any place of worship, or to the maintenance of any ministry, against his own free will and consent;" (Art. I, Sec. 1)

Rev. Code of Del. (1935), (Sec. 2758) provides:

> "No religious service or exercise, except the reading of the Bible and the repeating of the Lord's Prayer, shall be held in any school receiving any portion of the moneys appropriated for the support of public schools."

District of Columbia

The District of Columbia Code (Title 32, Sec. 1008) provides:

> "It is hereby declared to be the policy of the Government of the United States to make no appropriation of money or property for the purpose of founding, maintaining, or aiding by payment for services, expenses, or otherwise, any church or religious denomination, or any institution or society which is under sectarian or ecclesiastical control; * * *"

Florida

The Constitution prohibits the diversion of school funds to any other than school purposes and further provides

> "nor shall the same, or any part thereof, be appropriated to or used for the support of any sectarian school." (Art. 12, Sec. 13)
>
> * * * * *
>
> "No money shall ever be taken from the public treasury directly or indirectly in aid of any church, sect or religious denomination or in aid of any sectarian institution." (Declaration of Rights, Sec. 6)

Georgia

The Constitution (Art. I, Sec. I, Par. XIV) provides:

> "No money shall ever be taken from the public Treasury, directly or indirectly, in aid of any church, sect, or denomination of religionists, or of any sectarian institution."

By statute (Code of Georgia (1933) Sec. 32-703), the Georgia Textbook Commission is given authority to adopt a uniform series of textbooks for use in all the common schools and high schools but "none of said books so adopted shall contain anything of a partisan or sectarian nature."

Idaho

The Constitution provides:

> "Neither the legislature nor any * * * school district, * * *, shall ever * * * pay from any public fund or moneys whatever, anything in aid of any church or sectarian or religious society, or for any sectarian or religious purpose, or to help support or sustain any school * * * controlled by any church, sectarian or religious denomination whatsoever; nor shall any grant or donation of land, money or other personal property ever be made by the state, or any such public corporation to any church or for any sectarian or religious purpose." (Art. 9, Sec. 5)

> "No sectarian or religious tenets or doctrines shall ever be taught in the public schools, * * * No books, papers, tracts or documents of a political, sectarian or denominational character shall be used or introduced in any schools established under the provisions of this article, nor shall any teacher

or any district receive any of the public school moneys in which the schools have not been taught in accordance with the provisions of this article." (Art. 9, Sec. 6)

The statutes contain a similar provision. (See Idaho Code Ann. (1932), Sec. 32-2204.)

The Constitution provides, also:

"No person shall be required to attend or support any ministry or place of worship, religious sect or denomination, or pay tithes against his consent; * * *." (Art. I, Sec. 4)

Illinois

The Constitution provides:

"No person shall be required to attend or support any ministry or place of worship against his consent, nor shall any preference be given by law to any religious denomination or mode of worship." (Art. II, Sec. 3)

"Neither the General Assembly nor any * * * school district, * * *, shall ever * * * pay from any public fund whatever, anything in aid of any church or sectarian purpose or to help support or sustain any school * * * controlled by any church or sectarian denomination whatever; nor shall any grant or donation of land, money, or other personal property ever be made by the State or any such public corporation to any church, or for any sectarian purpose." (Art. VIII, Sec. 3)

The statutes contain a similar provision (Ill. Rev. Stat. Chap. 122, Sec. 286).

By Statutes the board of school directors and the board of education "have the control and supervision of all

public schoolhouses in their district, and to grant the temporary use of them, when not occupied by schools, for religious meetings and Sunday schools * * *" (Ill. Rev. Stat. (1943) Ch. 122, Sec. 123, Ill. Rev. Stat. (1939) Ch. 122, Sec. 136).

Indiana

The Constitution provides:

> "No money shall be drawn from the treasury, for the benefit of any religious or theological institution" (Art. 1, Sec. 6).
>
> * * * * *
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> "* * * no man shall be compelled to attend, erect, or support, any place of worship, or to maintain any ministry, against his consent." (Art. 1, Sec. 4)

Also under the Constitution (Art. 8, Sec. 3), the school fund must be used in the support of common schools and to no other purpose.

A statute provides (Ch. 225, Laws of 1943):

> "That if it is the wish of the parent * * * that such child attend, for a period or periods to be determined by the local principal or superintendent of schools and not exceeding in the aggregate one hundred and twenty minutes in any week, a school for religious instruction, conducted and maintained by some church or association or churches, or by some association organized for religious instruction, and incorporated under the laws of this state, and which school shall not be conducted or maintained, either in whole or in part, by the use of public funds raised by taxation; such child upon written request of the parent, * * * may be permitted to attend such school for religious

instruction and such permission shall be valid for not longer than the school year during which it is issued. * * *"

Iowa

The Constitution (Art. 1, Sec. 3) provides:

"* * * nor shall any person be compelled to attend any place of worship, pay tithes, taxes, or other rates for building or repairing places of worship, or the maintenance of any minister, or ministry."

Another statute (Section 299.1(4) Code of Iowa 1946) provides that the public school attendance requirements shall not apply to any child "while attending religious services or receiving religious instruction".

By Statute (Secs. 343.8 and 363.22 Code of Iowa (1946)) public money may not be appropriated, given, or loaned by any political subdivision "to or in favor of any institution, school, association, or object which is under ecclesiastical or sectarian management or control".

Kansas

The Constitution reads:

"No religious sect or sects shall ever control any part of the common-school or university funds of this state." (Art. 6, Sec. 8)

* * * * * *

"* * * nor shall any person be compelled to attend or support any form of worship; * * *" (Bill of Rights, Sec. 7).

The Statutes provide (Rev. Stat. of Kan. 1935, Ch. 72, Sec. 1819):

"No sectarian doctrine shall be taught or inculcated in any of the public schools of the city * * *".

Kentucky

The Constitution of Kentucky reads:

> "• • • nor shall any person be compelled to attend any place of worship, to contribute to the erection or maintenance of any such place, or to the salary or support of any minister of religion; nor shall any man be compelled to send his child to any school to which he may be conscientiously opposed." (Bill of Rights, Sec. 5)
>
> • • • • •
>
> "No portion of any fund or tax now existing, or that may hereafter be raised or levied for educational purposes, shall be appropriated to, or used, by or in aid of any church, sectarian or denominational school." (Sec. 189)

By Statute it is provided (Rev. Stat. 1944, Chap. 158, Sec. 190):

> "No book or other publication of a sectarian, infidel or immoral character, or that reflects on any religious denomination, shall be used or distributed in any common school. No sectarian, infidel or immoral doctrine shall be taught in any common school."

Provision is made in the statutes for the "moral instruction" of public school pupils who desire it and have the consent of their parents without expense to any board of education (see Rev. Stat. 1944, Chap. 158, Secs. 200, 210, 220, 230, 240, 250, 260). Section 220 provides:

> "The boards of education shall fix one day each week when pupils who have expressed a desire for moral instruction may be excused for at least one hour to attend their respective places of worship

or some other suitable place to receive moral instruction in accordance with the religious faith or preference of the pupils."

Louisiana

The Constitution reads:

> "No money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect or denomination of religion, or in aid of any priest, preacher, minister or teacher thereof, as such, and no preference shall ever be given to, nor any discrimination made against, any church, sect or creed of religion, or any form of religious faith or worship." (Art. 4, Sec. 8)
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> * * * * *
>
> "No public funds shall be used for the support of any private or sectarian school." (Art. 12, Sec. 13)

Section 2241 of Louisiana General Statutes, Dart, reads:

> "The school boards of the several parishes of this state are prohibited from entering into any contract * * * understanding * * *, tacitly or expressly, directly or indirectly, with any church, * * * or association of any religious sect or denomination whatsoever, with the representatives thereof * * * for the purpose of running any public school or schools of this state together, in connection, or in combination with any private or parochial school, or other institution of learning which may be under the control or management of any church * * * or other religious * * * association of any religious sect or denomination whatsoever * * *."

Maine

Revised Statutes of Maine (1944) (Ch. 37, Sec. 127) provides for Bible reading and:

> "It is provided further, that there shall be no denominational or sectarian comment or teaching, and each student shall give respectful attention but shall be free in his own forms of worship."

The Statutes also provide (Rev. St. of Maine, Ch. 37, Sec. 129):

> "The school committee of each city or town may authorize and complete a survey of the religious affiliation of all pupils attending the public schools within such city or town, and ascertain those pupils who desire and have the consent of parent or guardian for moral instruction. On a day in each week, to be fixed by the board, it may excuse such pupils for at least 1 hour for the purpose of attending their respective places of worship, or some other suitable place, there to receive moral instruction in accordance with the religious faith of said pupils."

Chapter 37, Sections 130-34 contain more detailed provision for such "moral instruction" which is said to be "permissive" and which shall be without expense to the school authorities.

Maryland

The Constitution provides (Art. 36, Declaration of Rights) "nor ought any person to be compelled • • • to maintain any place of worship or any ministry."

The Constitution further provides (Art. 8) that the General Assembly shall provide by taxation for the maintenance of free public schools.

A Maryland statute (Art. 77, Sec. 126, Ann. Code of Maryland, 1939) provides that "school books shall contain nothing of a sectarian or partisan character."

Massachusetts

The Constitution provides in part (Art. of Amend. Art. XVIII, Sec. 2):

> "* * * no grant, appropriation or use of public money or property or loan of public credit shall be made or authorized by the commonwealth or any political division thereof for the purpose of founding, maintaining or aiding any school or institution of learning, whether under public control or otherwise, wherein any denominational doctrine is inculcated * * *."

Statutes provide:

> "Absences [from school] may also be permitted for religious education at such times as the school committee may establish; provided, that no public funds shall be appropriated or expended for such education or for transportation incidental thereto; and provided, further, that such time shall be no more than one hour each week." (Ann. Laws of Mass., Ch. 76, Sec. 1)
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> * * * * * *
>
> "The school committee shall not purchase or use in the public schools school books favoring the tenets of any particular religious sect." (Ch. 71, Sec. 31)

Michigan

The Constitution (Art. II, Sec. 3) provides:

> "No person shall be compelled to attend, or, against his consent, to contribute to the erection or support of any place of religious worship, or to pay tithes,

taxes or other rates for the support of any minister of the gospel or teacher of religion. No money shall be appropriated or drawn from the treasury for the benefit of any religious sect or society, theological or religious seminary; nor shall property belonging to the state be appropriated for any such purpose."

The statutes (Sec. 15.392 Mich. Stat. Ann.) provide:

"No school district shall apply any of the moneys received by it from the primary school interest fund or from any and all other sources for the support and maintenance of any school of a sectarian character, whether the same be under the control of any religious society or made sectarian by the school district board."

Section 15.1927 (Mich. Stat. Ann.) provides:

"Nothing in this act contained shall be construed so as to permit any parochial, denominational, or private school to participate in the distribution of the primary school fund."

Minnesota

The Constitution of Minnesota states:

"* * * nor shall any man be compelled to attend, erect or support any place of worship, or to maintain any religious or ecclesiastical ministry against his consent, * * * nor shall any money be drawn from the treasury for the benefit of any religious societies, or religious or theological seminaries." (Art. 1, Sec. 16)

* * * * *

"* * * But in no case shall the moneys derived as aforesaid, (taxation) or any portion thereof, or any public moneys or property, be appropriated or used for the support of schools wherein the dis-

tinctive doctrines, creeds or tenets of any particular Christian or other religious sect, are promulgated or taught." (Art. 8, Sec. 3)

Section 131.14 of Minn. Statutes, Ann. states:

"The teachers in all public schools shall give instruction in morals * * *."

The Compulsory Education statute provides (Sec. 132.05(3) Minn. Stat. Ann.):

"Such child may be excused from attendance * * * upon its being shown to the satisfaction of such (school) board:

(3) That it is the wish of the parent, guardian * * * that he attend for a period or periods not exceeding in the aggregate three hours in any week, a school for religious instruction * * * such school to be conducted and maintained in a place other than a public school building, and in no event, in whole or in part, at public expense; provided that a child may be absent from school on such days as the child attends upon instruction according to the ordinance of some church;"

Mississippi

The Constitution (Art. 8, Sec. 208) provides:

"No religious or other sect or sects shall ever control any part of the school or other educational funds of this state; nor shall any funds be appropriated toward the support of any sectarian school, or to any school that at the time of receiving such appropriation is not conducted as a free school."

By Section 6423(4), Miss. Code 1942, School district trustees are under a duty "to exclude from the schools and

school libraries all books or papers of a sectarian, partisan, denominational or immoral character."

Another statute (Sec. 6672 Miss. Code Ann. 1942) provides:

> "A suitable course of instruction in the principles of morality and good manners, prepared by the state board of education shall be used in all the public schools of the state. Such course shall include what is known as the Mosaic Ten Commandments and may be graded with the idea that a certain amount of time will be devoted to it in each grade. No doctrinal or sectarian teaching shall be permitted in any public school or in the state and no pupil shall be required to take the course provided for herein when the parent or guardian of such pupil shall so request in writing filed with the superintendent or teacher. * * *"

Missouri

The Constitution provides:

> "That no person can be compelled to erect, support or attend any place or system of worship, or to maintain or support any priest, minister, preacher or teacher of any sect, church, creed or denomination of religion; * * *" (Art. 1, Sec. 6)
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> * * * * * *
>
> "That no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect, or denomination of religion, or in aid of any priest, preacher, minister or teacher thereof, as such * * *". (Art. 1, Sec. 7)
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> * * * * * *
>
> "Neither the general assembly, nor any * * *, school district * * *, shall ever * * * pay from any public fund whatever, anything in aid of any

religious creed, church or sectarian purpose; or to help to support or sustain any private or public school, * * * or other institution of learning, controlled by any religious creed, church or sectarian denomination whatever, nor shall any grant or donation of personal property or real estate ever be made by the state, or * * * other municipal corporation, for any religious creed, church or sectarian purpose whatever." (Art. 9, Sec. 8)

Montana

The State Constitution provides:

"No person shall be required to attend any place of worship or support any ministry, religious sect, or denomination, against his consent; * * *". (Art. III, Sec. 4)

* * * * *

"Neither the legislative assembly, nor * * * school district, * * *, shall ever make directly or indirectly, any appropriation, or pay from any public fund or moneys whatever, or make any grant of lands or other property in aid of any church, or for any sectarian purpose, or to aid in the support of any school * * * controlled in whole or in part by any church, sect or denomination whatever." (Art. XI, Sec. 8)

* * * * *

"* * * nor shall any sectarian tenets be taught in any public educational institution of the state; * * *" (Art. XI, Sec. 9)

"No appropriation shall be made for * * * educational * * * purposes to any person, corporation or community not under the absolute control of the state, nor to any denominational or sectarian institution or association." (Art. V, Sec. 35)

By statute (Sec. 1055, Rev. Code of Mont. 1935):

> "No publication of a sectarian, partisan, or denominational character shall be used or distributed in any school or be made a part of any school library; nor shall any sectarian or denominational doctrines be taught therein."

Nebraska

The Constitution provides:

> "No person shall be compelled to attend, erect or support any place of worship against his consent." (Art. I, Sec. 4)
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> * * * * *
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> "No sectarian instruction shall be allowed in any school or institution supported in whole or in part by the public funds set apart for educational purposes * * *. Neither the state Legislature nor any * * * other public corporation, shall ever make any appropriation from any public fund, or grant any public land in aid of any sectarian or denominational school or college, or any educational institution which is not exclusively owned and controlled by the state or a governmental subdivision thereof. * * *" (Art. VII, Sec. 11)

Nevada

The Constitution provides:

> "* * * any school district * * * which shall allow instruction of a sectarian character therein, may be deprived of its proportion of the interest of the public school fund during such * * * infraction;" (Art. XI, Sec. 2)
>
> * * * * *

"No sectarian instruction shall be imparted or tolerated in any school or university that may be established under the constitution." (Art. XI, Sec. 9)

* * * * *

"No public funds of any kind or character whatever, state, county, or municipal, shall be used for sectarian purposes". (Art. XI, Sec. 10)

The Statutes provide:

"No books, tracts, or papers of a sectarian or denominational character shall be used or introduced in any schools established under the provisions of this act; nor shall any sectarian or denominational doctrines be taught therein; nor shall any school whatever receive any of the public school funds which has not been taught in accordance with the provisions of this section." (Section 5754, Nev. Comp. Laws 1929)

* * * * *

"No portion of the public school funds, nor of the moneys raised by the state tax, or specially appropriated for the support of public schools, shall be devoted to any other object or purpose; nor shall any portion of the public school funds nor of money raised by state tax for the support of public schools, be in any way segregated, divided or set apart for the use or benefit of any sectarian or secular society or association." (Sec. 5786 Nev. Comp. Laws 1929)

New Hampshire

The Constitution provides (Part First Arts. 5th and 6th):

"* * * no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for

worshiping God in the manner and season most agreeable to the dictates of his own conscience; or for his religious profession, sentiments, or persuasion: * * *;" (5th)

* * * * * *

"And no person, of any one particular religious sect, denomination, shall ever be compelled to pay towards the support of the teacher or teachers of another persuasion, sect, or denomination." (6th)

By Statute (Rev. Laws of N. H. (1942) Ch. 135, Sec. 26):

"No book shall be introduced into the public schools calculated to favor any particular religious sect or political party."

New Jersey

The Constitution provides (Art. I, Sec. 3):

"* * * nor shall any person be obliged to pay tithes, taxes, or other rates for building or repairing any church or churches, place or places of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right, or has deliberately and voluntarily engaged to perform."

The Revised Statutes (Sec. 18: 14-78) state:

"No religious service or exercise, except the reading of the Bible and the repeating of the Lord's Prayer, shall be held in any school receiving any portion of the moneys appropriated for the support of public schools."

Section 18:22-9 of the Revised Statutes provide:

"No disbursement of the money raised by the state for the purpose of public higher education

shall be made to any institution wholly or in part under the control of a religious denomination or in which a denominational tenet or doctrine is taught."

New Mexico

The New Mexico Statute (1941) (Sec. 55-1102) provides:

"No teacher shall use any sectarian or denominational books in the schools or teach sectarian doctrine in the schools."

The Constitution states:

"* * * no part of the * * * funds appropriated, levied or collected for educational purposes, shall be used for the support of any sectarian, denominational or private school, college or university." (Art. 12, Sec. 3)

* * * * *

"No person shall be required to attend any place of worship or support any religious sect or denomination; * * *." (Art. 2, Sec. 11)

New York

The Constitution (Art. 11, Sec. 4) provides:

"Neither the state nor any subdivision thereof shall use its property or credit or any public money, or authorize or permit either to be used, directly or indirectly, in aid or maintenance * * * of any school or institution of learning wholly or in part under the control or direction of any religious denomination or in which any denominational tenet or doctrine is taught * * *."

Section 3210 (1b) N. Y. Education Law provides:

"Absence for religious observance and education shall be permitted under rules that the commissioner shall establish."

North Carolina

The Constitution (Art. IX, Sec. 4) provides for the establishment of a school fund and provides that it shall be used for maintaining "a system of free public schools, and for no other uses or purposes whatsoever."

North Dakota

The Constitution (Art. VIII) states:

> "* * * the legislative assembly shall make provision for the establishment and maintenance of a system of public schools which shall be open to all children of the state of North Dakota and free from sectarian control * * *." (Sec. 147)
>
> "* * * No money raised for the support of the public schools of the state shall be appropriated to or used for the support of any sectarian school." (Sec. 152)

By Statutes it is provided:

> "No sectarian publication devoted to the discussion of sectarian differences and creeds shall be admitted to the (School) library." (Sec. 15-2507, N. D. Rev. Code 1943)
>
> "Parents, guardians * * * of a child of compulsory school age may have such child excused from school attendance for the purpose of sending him to any parochial school to prepare such child for religious duties, for a total period of not exceeding six months in the aggregate and such period may extend over one or more years. No transportation shall be furnished * * * for any child who is attending a parochial school under the provisions of this chapter * * *." (Sec. 15-3407, N. D. Rev. Code 1943)

"The school board or board of education of every school district, * * * supported by appropriations or by tax levies, shall cause a placard containing the ten commandments of the Christian religion to be displayed in a conspicuous place in every schoolroom, classroom, or other place where classes convene for instruction * * *." (Sec. 15-4710, N. D. Rev. Code 1943)

Ohio

The Constitution provides:

"No person shall be compelled to attend, erect, or support any place of worship, or maintain any form of worship, against his consent." (Art. I, Sec. 7)

"* * * no religious or other sect or sects, shall ever have any exclusive right to, or control of, any part of the school funds of this State." (Art. VI, Sec. 2)

Oklahoma

The State Constitution provides:

"Provisions shall be made for the establishment and maintenance of a system of public schools, which shall be open to all the children of the State and free from sectarian control; * * *." (Art. I, Sec. 5)

"No public money or property shall ever be appropriated, applied, donated or used, directly or indirectly, for the use, benefit or support of any sect, church, denomination, or system of religion, or for the use, benefit, or support of any priest, preacher, minister or other religious teacher

or dignitary or sectarian institution as such." (Art. II, Sec. 5)

"* * * no part of the proceeds arising from the sale or disposal of any lands granted for educational purposes, or the income or rentals thereof, shall be used for the support of any religious or sectarian school, college or university * * *" (Art. XI, Sec. 5)

By statute, it is provided (Title 70, Sec. 495, Okla. Stat. 1941):

"No sectarian or religious doctrine shall be taught or inculcated in any of the public schools of this state."

Oregon

The Constitution (Art. I, Sec. 5) provides:

"No money shall be drawn from the treasury for the benefit of any religious or theological institution, * * *."

By statute (Sec. 111-2106 Ore. Comp. Laws Ann.) it is unlawful for teachers in public schools to wear in school the dress or garb of any religious order, sect or denomination.

Another statute (Sec. 111-3014 Ore. Comp. Laws Ann.) provides:

"Any child attending the public school, on application of his guardian or either of his parents, may be excused from such school for a period or periods not exceeding one hundred and twenty (120) minutes in any week to attend weekday schools giving instruction in religion."

Pennsylvania

The Constitution provides:

> "no man can of right be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent;" (Art. I, Sec. 3)
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> • • • • • •
>
> "No money raised for the support of the public schools of the Commonwealth shall be appropriated to or used for the support of any sectarian school." (Art. X, Sec. 2)

The Statutes provide (Title 24, Sec. 1563, Purdon's Pa. Stat.):

> "Any board of school directors of any school district shall have power to enter into suitable arrangement with a religious group, or organization of responsible citizens resident in the school district, who are interested in organizing part-time weekday religious education for school pupils. In such cases the board of school directors shall have power to adopt such rules and regulations for the release from school sessions of those pupils whose parents, or surviving parent, or guardian • • • desires to have them attend a class to receive religious education, in accordance with their religious faith for not more than one hour a week, subject, however, to such conditions and the keeping of such records of attendance at such classes and other records for the inspection of school authorities as the board shall deem proper. No part of the cost and expense of such religious instruction shall be paid out of public school funds."

Rhode Island

The Constitution (Art. I, Sec. 3) provides:

> "• • • whereas a principal object of our venerable ancestors, in their migration to this country and

> their settlement of this State, was, as they expressed it, to hold forth a lively experiment, that a flourishing civil state may stand and be best maintained with full liberty in religious concernments: We, therefore, declare that no man shall be compelled to frequent or to support any religious worship, place, or ministry whatever, except in fulfillment of his own voluntary contract; nor enforced, restrained, molested, or burdened in his body or goods; nor disqualified from holding any office; nor otherwise suffer on account of his religious belief * * *".

The Constitution also speaks (Art. XII, Secs. 2, 4) of the establishment of a permanent fund for the support of public schools and provides that the fund shall not be used for any other purpose.

The Statutes (R. I. Gen. Laws (1938), Chap. 180, Sec. 8), provide:

> "Every teacher shall aim to implant and cultivate in the minds of all children committed to his care the principles of morality and virtue."

South Carolina

The Constitution (Art. XI, Sec. 9) provides:

> "The property or credit of the State of South Carolina, or of any * * * school district, or other subdivision of the said State, or any public money, from whatever source derived, shall not * * * be used, directly or indirectly, in aid or maintenance of any college, school * * * or other institution, society or organization, of whatever kind, which is wholly or in part under the direction or control of any church or of any religious or sectarian denomination, society or organization."

South Dakota

The Constitution (Art. VI, Sec. 3) provides:

> "No person shall be compelled to attend or support any ministry or place of worship against his consent nor shall any preference be given by law to any religious establishment or mode of worship. No money or property of the state shall be given or appropriated for the benefit of any sectarian or religious society or institution."

The Statutes provide (Sec. 15.3103 So. Dak., Code of 1939):

> "No sectarian doctrine may be taught or inculcated in any of the public schools of the state."

(Sec. 15.3202 (6) So. Dak., Code of 1939):

> "A child may, on application of his parent or guardian, be excused from school for one hour per week for the purpose of taking and receiving religious instruction conducted by some church or association of churches or any Sunday school association * * *. The county superintendent of schools in common school districts and the board of education in consolidated and independent school districts shall decide at what hour pupils may be thus excused, and in no event shall such instruction be given in whole or in part at public expense."

Tennessee

The Constitution (Art I, Sec. 3) provides:

> "that no man can of right, be compelled to attend, erect, or support any place of worship, or to maintain any minister against his consent;"

The Constitution (Art. XI, Sec. 12) further provides that the school fund is not to be "diverted to any other

use than the support and encouragement of common schools."

A statute provides (Sec. 2344, Will. Tenn. Code, 1934):

> "It shall be unlawful for any teacher in any of the * * * public schools of the state which are supported, in whole or in part, by the public school funds of the state, to teach any theory that denies the story of the divine creation of man as taught in the Bible, and to teach instead that man descended from a lower order of animals."

Texas

The Constitution provides:

> "No man shall be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent." (Art. I, Sec. 6)
>
> * * * * *
>
> "No money shall be appropriated, or drawn from the Treasury for the benefit of any sect, or religious society, theological or religious seminary; nor shall property belonging to the State be appropriated for any such purposes." (Art. I, Sec. 7)
>
> * * * * *
>
> "* * * nor shall the same (school fund), or any part thereof ever be appropriated to or used for the support of any sectarian school * * *." (Art. VII, Sec. 5)

A statute (Art. 2899, Ver. Civ. Stat. of Texas) provides:

> "No part of the public school fund shall be appropriated to or used for the support of any sectarian school."

A statute (Art. 2843, Ver. Civ. Stat. of Texas) provides for the adoption of a uniform system of textbooks and states: "* * * provided that none of said books shall contain anything of a partisan or sectarian character * * *." It also provided (Art. 2604) that "No course of instruction of a sectarian character shall be taught" in the State University.

Utah

The Constitution provides:

> "The State shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; * * * There shall be no union of Church and State, nor shall any church dominate the State or interfere with its functions. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or for the support of any ecclesiastical establishment." (Art. I, Sec. 4)
>
> * * * * * *
>
> "The Legislature shall make laws for the establishment and maintenance of a system of public schools, which shall be open to all the children of the State and be free from sectarian control." (Art. III, Sec. Fourth)

(See also Art. X, Sec. 1 to same effect.)

> "Neither the Legislature nor any * * * school district * * *, shall make any appropriation to and in the support of any school, * * * controlled in whole, or in part, by any church, sect or denomination whatever." (Art. X, Sec. 13)

Section 75-1-4 of the Utah Code (1943) provides:

> "It shall be unlawful * * * to teach in the public schools of this state while in session any

* * * atheistic, infidel, sectarian-religious or denominational doctrine. * * * In prescribing the studies and exercises and in the management and control of such institutions no partiality or preference shall be shown to one sect or religious denomination over another. * * *"

Vermont

Article 3 of the Constitution provides:

"* * * that no man ought to, or of right can be compelled to attend any religious worship, or erect or support any place of worship, or maintain any minister, contrary to the dictates of his conscience, nor can any man be justly deprived or abridged of any civil right as a citizen, on account of his religious sentiments, * * *."

Virginia

Section 58 of the Constitution provides:

"No man shall be compelled to frequent or support any religious worship, place or ministry, whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but all men shall be free to profess and by argument to maintain their opinions in matters of religion, and the same shall in no wise diminish, enlarge, or affect, their civil capacities. And the general assembly shall not prescribe any religious test whatever, or confer any peculiar privileges or advantages on any sect or denomination, or pass any law requiring or authorizing any religious society, or the people of any district within this State, to levy on themselves, or others any tax for the erection or repair of any house of public worship, or for the support of any church or ministry; * * *."

Washington

The Constitution (Art. 1, Sec. 11, Amend. 4) provides:

> "RELIGIOUS FREEDOM.—Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or be disturbed, in person or property on account of religion; * * *. No public money or property shall be appropriated for or applied to any religious worship, exercise, or instruction, or support of any religious establishment."

West Virginia

The Constitution (Art. 3, Sec. 15) provides:

> "No man shall be compelled to frequent or support any religious worship, place or ministry whatsoever; nor shall any man be enforced, restrained, molested or burthened, in his body or goods, or otherwise suffer, on account of his religious opinions or belief, * * * and the Legislature shall not prescribe any religious test whatever, or confer any peculiar privileges or advantages on any sect or denomination, or pass any law requiring or authorizing any religious society, or the people of any district within this State, to levy on themselves, or others, any tax for the erection or repair of any house for public worship, or for the support of any church or ministry * * *."

Wisconsin

The Constitution provides:

> "* * * nor shall any man be compelled to attend, erect or support any place of worship, or to maintain any ministry, against his consent; * * * nor

shall any money be drawn from the treasury for the benefit of religious societies, or religious or theological seminaries." (Art. I, Sec. 18)

* * * * *

"The legislature shall provide by law for the establishment of district schools * * * and no sectarian instruction shall be allowed therein." (Art. X, Sec. 2)

Wyoming

The Constitution provides:

"No sectarian instruction, qualification or tests shall be imparted, exacted, applied or in any manner tolerated in the schools of any grade or character controlled by the state, nor shall attendance be required at any religious service therein, nor shall any sectarian tenets or doctrines be taught or favored in any public school or institution that may be established under this constitution." (Art. 7, Sec. 12)

* * * * *

"No money of the state shall ever be given or appropriated to any sectarian or religious society or institution." (Art. 1, Sec. 19)